# STATE OF MICHIGAN

# COURT OF APPEALS

HARVEY RENDER,

Plaintiff,

and

MARY RENDER,

Plaintiff-Appellant,

v

CITY OF PONTIAC,

Defendant-Appellee.

UNPUBLISHED
June 13, 2006

No. 258136
Oakland Circuit Court
LC No. 2003-048580-CZ

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiff Mary Render[1] appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action for wrongful demolition of real property. Plaintiff purchased the property from First Samaritan Corporation for $55,000 on February 2, 2000. In May 2000, she discovered that the "property" had been demolished. She claims that she did not receive notice before the demolition.

MCL 125.538 *et seq.* prescribes the procedure to be followed when a municipality demolishes a "dangerous building." Plaintiff does not dispute that the statutory procedure was followed in this case. The trial court determined, and plaintiff does not contest, that defendant posted the required notices and sent them by certified mail to the former owners of the property and that the required hearings were held before the hearing officer and city council.

[1] Counsel stipulated to dismiss Harvey Render's claims because he lacked standing.

However, plaintiff claims that she did not receive notice, that notice to her predecessors in interest is not notice to her, and that "[d]ue process requires some notice be given." She suggests that defendant could have filed a notice of lis pendens so that she would have been alerted at the time of a title search.

The trial court granted summary disposition to defendant because it complied with the statutory requirements. The court rejected plaintiff's argument that compliance with the statute was not sufficient to afford plaintiff due process.

This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999). Similarly, this Court reviews de novo the legal question whether a party received sufficient notice to satisfy due process. See *Vicencio v Ramirez,* 211 Mich App 501, 503-504; 536 NW2d 280 (1995); *In re Carey,* 241 Mich App 222, 225-226; 615 NW2d 742 (2000).

"In any proceeding involving notice, due process requires that the notice given be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Maxwell v Dep't of Environmental Quality,* 264 Mich App 567, 574; 692 NW2d 68 (2004) (citation and internal quotation marks omitted). In another context, the Supreme Court has explained that the notice and opportunity necessary to provide due process must be "appropriate to the nature of the case and within the limits of practicability." *Republic Bank v Genesee Co Treasurer,* 471 Mich 732, 742; 690 NW2d 917 (2005).

Plaintiff's reliance on *Himes v City of Flint,* 38 Mich App 308; 196 NW2d 321 (1972), and *Geftos v Lincoln Park,* 39 Mich App 644; 198 NW2d 169 (1972), is misplaced because those cases do not establish that due process required defendant to take action beyond that required by the statutory procedure established by the Legislature.

Essentially, plaintiff seeks to have this Court create new notice requirements to protect innocent purchasers from unscrupulous sellers. As explained by our Supreme Court in another context, however, this type of policy argument should be addressed to the Legislature:

> The courts lack the authority to create new notice requirements. The fact that another statutory scheme might appear to have been wiser or would produce fairer results is irrelevant. Arguments based on such policy considerations must be addressed to the Legislature. [*Smith v Cliffs on the Bay Condo Ass'n,* 463 Mich 420, 430; 617 NW2d 536 (2000), abrogated on other grounds in *Jones v Flowers*, __ US __; __ S Ct __; __ L Ed 2d __ (2006).]

Plaintiff also asserts that the trial court improperly made findings of fact when it ruled on defendant's motion. Although a trial court may not make factual findings when ruling on a motion for summary disposition under MCR 2.116(C)(10), *Jackhill Oil Co v Powell Production, Inc,* 210 Mich App 114, 117; 532 NW2d 866 (1995), the asserted error here is harmless because this Court's review is de novo and the alleged finding of fact is not material to the analysis. See *Berry v J & D Auto Dismantlers, Inc,* 195 Mich App 476, 479; 491 NW2d 585 (1992) ("there is

no error if summary disposition of a factual issue is granted if that issue is not material to the decision of the case").

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra